Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2026 TMOB 38

Date of Decision: 27-02-2026

INTERLOCUTORY RULING

Opponent: Intouch Insight Inc.

Applicant: IntouchCX Inc.

Applications: 2192100 for INTOUCHCX and 2249835 for INTOUCHCX & Design

[1] IntouchCX Inc. (the Applicant) requests an interlocutory ruling striking paragraphs 1, 2, 4, 5(c) and (d) from the statements of opposition as originally filed.

[2] In response, Intouch Insight Inc. (the Opponent) seeks leave to amend the statements of opposition, and provides amended statements of opposition dated January 26, 2026 (the Amended Statements of Opposition) for inclusion on the record. The Opponent argues that none of the paragraphs of the Amended Statements of Opposition ought to be struck.

[3] For the following reasons:

- the Opponent is granted leave to amend the statements of opposition, and the Amended Statements of Opposition are made of record; and

- the request to strike paragraphs 1, 2, 4, 5(c) and 5(d) from the Amended Statements of Opposition is refused.

LEAVE TO AMEND THE STATEMENT OF OPPOSITION

[4] I am satisfied that it is in the interests of justice to grant the Opponent leave to amend the statements of opposition, as requested. This opposition matter is still in its early stages, and the amendments are being sought in response to the issues raised by the Applicant. Furthermore, there is no appreciable prejudice to the Applicant in allowing the amendments, whereas the Opponent may be prejudiced by the striking of grounds of opposition if the amendments sought are not accepted.

[5] In view of the foregoing, and in accordance with section 48 of the *Trademarks Regulations*, SOR/2018-227, the Opponent's request for leave is granted, and the Amended Statement of Oppositions are of record. The Applicant's request to strike will therefore be considered in relation to the Amended Statements of Opposition.

PLEADINGS IN OPPOSITION MATTERS

[6] The Registrar's power to strike all or part of a statement of opposition is set out in section 38(6) of the *Trademarks Act*, RSC 1985, c. T-13 (the Act) as follows:

> (6) At the applicant's request, the Registrar may … strike all or part of the statement of opposition if the statement or part of it
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> (a) is not based on any of the grounds set out in subsection (2); or
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> (b) does not set out a ground of opposition in sufficient detail to enable the applicant to reply to it.

PARAGRAPHS 2(A), 4 AND 5(D)

[7] The Applicant requests that paragraphs 2, 4 and 5(d) be struck from the statements of opposition on the grounds that they contain open ended language (such as "certain registered trademarks", "including", and "including without limitation") that fails to give sufficient detail to allow a reply.

[8] The Amended Statements of Opposition address the Applicant's concerns in this respect as the open ended language has been removed. The Amended Statements of Opposition refer to a closed list of trademarks and trade names which provide sufficient detail for the Applicant to prepare a response. As such, these paragraphs will not be struck.

PARAGRAPHS 1 AND 5(C)

[9] The Applicant further submits that the grounds of opposition stated at paragraph 1 of each statement of opposition should be struck because they fail to give sufficient detail to permit a reply. In particular, the Applicant submits that the Opponent's allegation that the Applicant knew or should have known of the trademarks or trade names alleged to be owned by the Opponent is not sufficient to establish bad faith.

[10] As noted by the Opponent, the purpose of an interlocutory ruling is not to determine whether a ground of success has a reasonable prospect of success, but rather whether it contains sufficient material facts. In any event, the Amended Statements of Opposition address the Applicant's concerns as they contain additional facts in support of the bad faith ground. In this regard, the Amended Statements of Opposition now refer to the Applicant's intent to disrupt the activities of the Opponent in association with its identical trademark, pressure the Opponent into disengaging from its longstanding use of its identical trademark and misappropriate its trademark

through online commercial tactics. I am satisfied that this ground of opposition as amended in each case contains sufficient facts to permit the Applicant to reply thereto. Accordingly, this ground of opposition will therefore not be struck.

[11] With regard to paragraph 5(c), the Applicant claims the allegations that the Mark is confusing with the trademarks of the Opponent even if true, which is denied, does not establish that the use of the Applicant's trademark would result in passing off by substitution under Section 7(c) of the Act. The Applicant submits that the Opponent has provided no material facts to support this pleading, such as facts related to substitution or mislabelling of goods or services.

[12] Paragraph 5 and 5(c) of the Amended Statements of Opposition state as follows:

> At the filing date of the application in Canada, determined without taking into account subsection 34(1) of the Trademarks Act, the Applicant was not entitled to use the Subject Mark in Canada in association with the goods and services in the Application, contrary to paragraph 38(2)(f) of the Trademarks Act in that:
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> (c) the Applicant's use of the Subject Mark in association with the goods and services is contrary to subsection 7(c) of the Trademarks Act, because the Subject Mark was, at the time of filing of the Application, confusing with certain trade names and trademarks of the Opponent, namely those set out in paragraph(s) 1(b), 2(a), 3(a), and 3(b) above, and consumers obtaining the goods and services from the Applicant would believe that they will receive the Opponent's genuine customer relationship management goods and services only to later discover that the Applicant had passed off other goods or services as those obtained or requested. Such trademarks and trade names had acquired substantial goodwill prior to the filing of the Application and any use by the Applicant. Such use of the Subject Mark will necessarily cause harm to the Opponent.

[13] Section 7(c) is a codification of the common law tort of passing off through substitution. To succeed the Opponent would essentially have to prove that the Applicant supplied its own goods or services in response to an order for those of the Opponent [*LRC Products Limited and Church & Dwight Co., Inc*., 2023 TMOB 52].

[14] Again, the purpose of an interlocutory ruling is not to determine whether a ground of success has a reasonable prospect of success, but rather whether it contains sufficient material facts. In my view, the ground as pleaded does contain sufficient material facts for the Applicant to reply. In this regard, it seems clear that the allegation is that a consumer calling the Applicant and asking for the Opponent's goods or services would be supplied with the Applicant's goods or services. Additional details are not required in order for a pleading to be sufficient. The paragraph 5(c) grounds of opposition are therefore not struck.

Applicant's Counterstatements

[15] Pursuant to the Applicant's request of December 22, 2025, the Applicant has **one month** from the date of this ruling to file and serve its Counterstatements.

Cindy Folz
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

Agents of Record

For the Opponent: Fasken, Martineau, Dumoulin LLP

For the Applicant: MLT AIKINS